

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 05-44481(RDD)

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5 In the Matter of:

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7 DPH HOLDINGS CORP., ET AL.,

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9 Debtors.

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13 U.S. Bankruptcy Court

14 300 Quarropas Street

15 White Plains, NY 10601

16

17 July 25, 2013

18 10:07 AM

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20 B E F O R E :

21 HON ROBERT D. DRAIN

22 U.S. BANKRUPTCY JUDGE

23

24

25 ECR OPERATOR: A. VARGAS

1 Hearing re: Reorganized Debtors' Motion for an Order to
2 Compel Compliance with, and to Implement, the Modified Plan,
3 Plan Modification Order and Related Documents (related
4 document(s) 22075)

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6 Hearing re: Objection by General Motors (related
7 document(s) 22088)

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9 Hearing re: Notice of Agenda Proposed Sixty-First Claims
10 Hearing Agenda

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12 Hearing re: Notice of Agenda Proposed Eighty-Third Omnibus
13 Hearing Agenda

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25 Transcribed by: Jamie Gallagher

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P R O C E E D I N G S

THE COURT: All right. In re DPH Holdings.

MR. FLORES: Good morning, Your Honor. Steven Flores, Togut Segal for the DPH reorganized debtors.

THE COURT: Good morning.

MR. STEINBERG: Good morning, Your Honor. I'm Arthur Steinberg from King & Spalding on behalf of New GM.

THE COURT: Morning. Okay. I've gotten the two agendas: the omnibus hearing agenda and the claims hearing agenda. There's nothing on for the claims hearing agenda.

MR. FLORES: No, Your Honor, there is not. I believe the only matter we have today is the motion to compel compliance with the modified plan.

THE COURT: Right.

MR. FLORES: As we alerted chambers yesterday, the parties have reached an interim agreement with respect to that motion. And I'll be very brief, but I'd like to set out that agreement for the Court.

THE COURT: Okay.

MR. FLORES: I'll refer to that motion as the motion to compel, Your Honor. As we advised yesterday, this proposed adjournment does not in any way adjourn or otherwise affect the reorganized debtors' motion for a final decree closing the bankruptcy cases. That motion I'll refer to as the case closing motion. That motion will go forward

1 as scheduled on July 30th.

2 The parties have agreed to adjourn the hearing to
3 consider the motion to compel for 30 days to the next omni
4 date, which I believe is August 22nd, so that we can
5 exchange information and settlement discussions can be had.

6 GM agrees that notwithstanding anything to the
7 contrary in the master disposition agreement or elsewhere,
8 this Court shall not lose jurisdiction to adjudicate the
9 issues concerning the motion to compel by reason of the
10 adjournment of the hearing to consider the motion to compel
11 going past July 30, 2013. Specifically, this Court will
12 hear the motion to compel and any proceedings related to the
13 motion to compel if those issues need to be adjudicated.

14 The filing of the motion -- the motion to compel
15 has tolled the time for the filing of an adversary
16 proceeding if the Bankruptcy Court ultimately determines
17 that an adversary proceeding is needed. In other words,
18 Your Honor, Bankruptcy Court jurisdiction is not impacted in
19 any way by the settlement period.

20 The parties -- during that time, the parties will
21 work together in good faith to address and exchange
22 information about the issues raised and work -- and the
23 information we exchange will be kept confidential, but we
24 will work together in good faith to address any
25 confidentiality issues in case any documents ultimately need

1 to be filed with the Court.

2 And as I mentioned, we'll also work together in
3 good faith to try and resolve the disputes concerning the
4 motion to compel. This agreement is without waiver of
5 either parties' rights whatsoever, including under the
6 funding agreement. And this agreement is not a concession
7 by the reorganized debtors that New GM is entitled to any of
8 the information it seeks. Of course, we understand that New
9 GM may disagree with -- with our position on that.

10 Just a couple more points, Your Honor --

11 THE COURT: Well -- okay, when you say that it's
12 without prejudice, obviously there was an assertion that
13 jurisdiction might be lost. That obviously trumps what you
14 just said as far as without prejudice.

15 MR. FLORES: That does, Your Honor. That does,
16 Your Honor.

17 THE COURT: Right. Okay.

18 MR. FLORES: The parties have agreed that the
19 reorganized debtors shall file their reply brief in support
20 of the motion to compel no later than four business days
21 before the hearing on the adjourned motion to compel. And
22 between now and July 30th, the parties will work together to
23 try and resolve New GM's objection to the case closing
24 motion. And that motion will proceed and be heard on
25 July 30th.

1 For the avoidance of any doubt, New GM will not
2 assert that the adjournment of the motion to compel is a
3 defense to the case closing motion, or that the adjournment
4 is any reason whatsoever why the case closing motion cannot
5 go forward as scheduled on the 30th.

6 But New GM can still raise its objections to the
7 case closing motion asserted in its consolidated objection
8 to the motion to compel and case closing motion. So, Your
9 Honor, we intend to submit a consent order later today and
10 unless Your Honor has any questions, we'd also ask that you
11 so order the record.

12 THE COURT: Okay. Mr. Steinberg, was that
13 consistent with GM's understanding of what's been agreed so
14 far?

15 MR. STEINBERG: Your Honor, that -- those scripted
16 remarks by Mr. Flores was approved by me before he read
17 them, so I obviously agree with them.

18 I would like to say just a couple of words to try
19 to bring a little color to what -- what has gone on outside
20 of the courtroom so Your Honor can see where this thing is
21 going.

22 When we got the motion, and this is when I first
23 got involved in this case, so it's a -- it's an honor to
24 appear before you in this courtroom, it was clear that I was
25 -- I had more questions than needed and that I thought more

1 time needed to develop the record in this case. But the --
2 to give the Togut's firm its due, they were backed up to a
3 provision in the master disposition agreement which had Your
4 Honor's jurisdiction sort of evaporating where you were now
5 in the non-exclusive period. And come the end of this
6 month, you would be losing jurisdiction over an issue which
7 is probably important for Your Honor to stay with for the
8 rest of the time.

9 The reason why we raised the jurisdiction issue
10 was because there was a lot of words about how this was an
11 emergency and we needed to deal with this right away. And
12 we were trying to emphasize to Your Honor that we didn't
13 think it was an immediate emergency, although frankly there
14 is a deadline by the end of the year so people have to try
15 to deal with issues.

16 We actually look at the case closing motion in the
17 same way, which is that to some extent they're trying to
18 hurt the cats so -- of the stray issues that have been
19 around the case for a while. But we didn't want to be
20 prejudiced by having to run into Court without the benefit
21 of knowing more, and potentially having to take discovery.

22 And we -- we talked to the Togut firm and they
23 said understanding those concepts, we would agree to a 30
24 day adjournment. We'll try to exchange as much as
25 information on an informal basis, so that you can get

1 brought up to speed and you can either convince us, or we
2 can convince you about some of the issues that are involved.

3 When we reached that arrangement yesterday, I had
4 asked for an adjournment of the case closing motion, because
5 there's an overlap between the two issues. The Skadden
6 firm, who was handling that and was not prepared to do that.

7 So, that's why you get in the statement we're not
8 agreeing to adjourn. I am prepared to make my arguments on
9 Tuesday if there's not going to be any change. But
10 obviously there's an overlap between the two because, you
11 know, part of what we said in the confusion in connection
12 with this motion, is also -- ties into the case closing
13 motion.

14 There's a discussion about whether we have to fund
15 environmental liabilities on three particular sites. Your
16 Honor, in the last two days, after we had filed our
17 objection, the State -- the Michigan environmental authority
18 filed an objection to the case closing motion saying that
19 they think there's something, and they described what was
20 happening was that ultimately if there would be a deal, the
21 properties would be transferred to a trust owned by, in
22 effect, DPH and then there would be a remediation.

23 The next day, the EPA files an objection saying
24 that we fundamentally misunderstand what they meant by a
25 trust and therefore they filed a motion in support of the

1 motion to compel. This morning, there was an objection
2 filed by the EPA to the case closing motion saying we're not
3 really close to -- we haven't reached a deal yet. And so,
4 obviously, things are in a state of flux and that's not
5 necessarily unusual when you have deadlines coming up and
6 people are now trying to stake out their position.

7 The other thing that overlaps between the two is
8 that the other thing that they asked us to fund was a
9 reserve in connection with the Delaware dissolution statute
10 in connection with claims, which is where we got copies of
11 the claims. But on the motion to close cases where they
12 describe what the remaining claims are, none of those are in
13 the remaining claims. And so, we obviously have issues of
14 why we're funding something that -- that the -- the other
15 counsel is saying doesn't exist or is not worth dealing
16 with.

17 I'm sure there's an explanation, I just couldn't
18 tell it from putting the two motions together.

19 The one thing that I will just conclude with -- I
20 have two final remarks. One, I understand from the case
21 management order that was entered at the beginning of the
22 case that the way things work when someone files a motion is
23 that people object when they're supposed to object on the
24 deadline, and then the reply is due a day before the actual
25 hearing date, 4 o'clock of the day before if there's

1 something in the morning.

2 The agenda that was filed in connection with
3 today's hearing for the case closing motion, not the motion
4 to compel, indicates that a reply was filed, or was going to
5 be filed, but that was indicated that that was an additional
6 pleading, that's not on the docket.

7 And so, if Skadden is going to be replying to
8 this, they had indicated they had filed it yesterday, but we
9 have not seen it yet and it's not on the docket. If they're
10 going to -- to actually want to go forward on Tuesday, it is
11 somewhat of a disadvantage for us to have to try to get
12 whatever their responses are, you know, less than 24 hours
13 before, especially because they, themselves, decided to
14 adjourn this hearing.

15 The other thing is, is while we complied with our
16 objection deadline, we still see objections trickling in to
17 the case closing motion and I have no idea whether those
18 were just people who decided to ignore a deadline, or they
19 were under extension.

20 And so, my complaint is sort of -- I'd like to
21 know -- to have a final record of the pleadings, and to have
22 a little extra time to be able to prepare so that if I go
23 forward, I have something coherent to say and the ability to
24 digest. And so that's -- that's one remark.

25 And then just finally, I will say this in a

1 compliment to the Togut firm. I once heard Al Togut speak
2 and he said the compliment of a good litigator is not how he
3 performs in court, but how he performs before court to make
4 sure things are getting resolved. And with that admonition,
5 I think that's the way they practice. We're going to try to
6 adopt that in this case to see whether we can try to have a
7 cleaned up position for Your Honor so that Your Honor could
8 see either a streamlined bunch of issues or a resolution
9 over the next 30 days.

10 THE COURT: Okay. Well, as to -- as to the case
11 closing motion, my clerks have, but I haven't started to
12 prepare for that. So, I don't know whether -- what's on the
13 agenda was -- is now on the docket or not, but it should be,
14 obviously if it's prepared and provided to chambers, it
15 should be on the docket, too.

16 I think there's someone from Skadden on the phone.
17 Right, a Mr. (indiscernible - 00:15:33), so maybe you can
18 relay that to whoever is in charge of that -- that pleading.

19 And on the other points, it was clear to me that
20 the -- the two deadlines that the debtors are facing here,
21 the July 30th deadline and the year end deadline, we're in
22 -- at least in some part, and maybe a large part driving the
23 need to get this in front of me. And it was also clear to
24 me that there was a need to get more to the bottom of these
25 two payment requests. So, I'm glad the parties, in fact,

1 have been able to make sure they weren't under the gun of
2 the most immediate deadline so that they can get more of the
3 facts.

4 Clearly, I would have pressed you for the facts
5 today and I hope that you'll have a more complete record.
6 And maybe, in light of that, we'll be able to resolve it
7 between yourselves before the next hearing date on both the
8 Delaware patent claim issue and how that relates first to
9 whether these really are pending claims, and second how it
10 relates to 502 and the Bankruptcy Code.

11 And then secondly -- separate and apart even from
12 the wording of the agreement. And then secondly, the
13 environmental issue. And on the environmental issue, I
14 mean, ultimately it may make sense to do this as an economic
15 matter, but this needs to be nailed down too, I think. You
16 know, particularly if there's potentially a different view
17 of what the proposal is as between the U.S. and Michigan.
18 So, that's worth nailing down.

19 So, I'll see you all in August and hopefully it
20 will be on a consensual basis. Or even if it's not on a
21 wholly consensual base, on a -- it's done on a largely
22 consensual basis.

23 MR. STEINBERG: Thank you, Judge.

24 MR. FLORES: Thank you, Your Honor.

25 THE COURT: Okay.

1 (Whereupon these proceedings were concluded at 10:22
2 AM)
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C E R T I F I C A T I O N

I, Jamie Gallagher, certify that the foregoing transcript is
a true and accurate record of the proceedings.

Jamie
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